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## Letter Ruling 01-15: Electricity Exemption for Two Taxpayers at a Single Billed Meter

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### I. Facts

You have requested a letter ruling on behalf of \*\*\*\*\* (the Taxpayer) regarding the sales tax exemption for electricity set forth at G.L. c. 64H, § 6(i). You have made the following representation of facts, upon which we base our ruling. The Taxpayer represents that it is the owner of an industrial park. The Taxpayer plans on selling three of the buildings in the industrial park to a Purchaser. After the proposed transaction, the Taxpayer will continue to own thirteen buildings in the industrial park.

The local electric company provides electricity to the industrial park through a single meter that records the total usage at the park. The electric company bills the Taxpayer for the whole amount of electricity used in the park, and will continue to do so after the proposed transaction. The Taxpayer pays the entire electric bill, and will continue to do so after the proposed transaction.

After the electricity passes through the billed meter, the Taxpayer redirects it through a series of seven substations. Four of those substations serve buildings that will be owned by the Taxpayer. One of those substations serves a building that will be owned by the Purchaser. The final two substations will jointly serve both Taxpayer-owned and Purchaser-owned buildings. The Taxpayer represents that it will provide electricity to the Purchaser under terms of its own contract, and will presumably charge the Purchaser for the electricity it uses.

The Taxpayer represents that the activities of both the Taxpayer and the Purchaser are the manufacture of tangible personal property to be sold in the regular course of business. The Taxpayer further represents that more than 75% of the electricity that passes through the billed meter will be used in the actual manufacture of personal property to be sold, both before and after the proposed transaction.

### II. Issue

Where two individual taxpayers occupy an industrial plant that is serviced by a single billed electric meter, and where not less than 75% of the electricity that passes through the billed meter is used for the purposes of manufacturing, as that term is defined in G.L. c. 64H, § 6(i), is the taxpayer that maintains the billing account with the electric company eligible for the exemption at G.L. c. 64H, § 6(i) for all the electricity that passes through the meter?

### III. Ruling

Where two individual corporations occupy an industrial plant that is serviced by a single billed electric meter, and where not less than 75% of the electricity that passes through the billed meter is used for purposes of manufacturing, as that term is defined in G.L. c. 64H, § 6(i), the Taxpayer that maintains the billing account with the electric company is eligible for the exemption at G.L. c. 64H, § 6(i) for all the electricity that passes through the meter whether consumed by a single taxpayer or multiple taxpayers. The burden of proof is on the Taxpayer to show that the industrial park is a factory at a fixed location primarily engaged in the manufacture, conversion, or processing of tangible personal property to be sold in the regular course of business, and that all other statutory requirements, including the 75% requirement, are met. The Department does not rule on whether the activities in the industrial park actually meet the manufacturing and other requirements of G.L. c. 64H, § 6(i).

### IV. Discussion

Unless otherwise exempted, Massachusetts imposes a tax at the rate of five percent on all sales at retail of tangible personal property or the performance of services in the Commonwealth. G.L. c. 64H, § 2. As a complement to the sales tax, Massachusetts places a five percent use tax on the storage, use, or other consumption of tangible personal property or services in the Commonwealth. G.L. c. 64I, § 2. Electricity is tangible personal property under the statute. G.L. c. 64H, § 1.

An exemption from the sales and use tax exists, however, for:

[t]he sales, furnishing or service of . . . (3) gas, steam or electricity which are consumed and used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold or in the heating of such industrial plant; provided that the exemption under this subparagraph (3) shall only be allowed with respect to a metered building, location or premises at which not less than seventy-five percent of the gas, steam or electricity consumed at such metered building, location or premises is used for the purposes of such manufacturing or heating, and the term “industrial plant” shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business . . . .

G.L. c. 64H, § 6. *Cf.* G.L. c. 64I, § 7(a).

The exemption at G.L. c. 64H, § 6(i) applies to the sale of electricity itself based on the way it is metered and used, rather than to the purchaser, provided that the purchaser meets all the other statutory conditions. *Cf. Houghton Mifflin Co. v. State Tax Commission*, 373 Mass. 772, 777 (1977)(construing the exemption at G.L. c. 64H, § 6(r) as applying to the item of property itself and not the character of the buyer: “[s]ection 6(r) does not require that the buyer . . . own and operate an industrial plant, but provides simply that the item purchased be used and consumed” in an industrial plant). In Technical Information Release 90-7, the Department states that the seventy-five percent consumption requirement under the exemption is applied on a “billed meter basis; purchases of energy billed on a particular meter are exempt only if seventy-five percent of the energy consumed at that meter” is used in accordance with statutory purposes. TIR 90-7, § II.C.1. This requirement does not impose any conditions about the status of the party asserting the exemption. The principle is affirmed in TIR 98-5, which states that a “taxpayer may claim the § 6(i) exemption for all of the power recorded on each meter at which the seventy-five percent test is met. TIR 98-5, § II.B.(1). See *also* DD 92-3, Directive 1 (d)(1). The Department has construed this provision as applying to electricity purchased by a landlord where its lessee is using the electricity for manufacturing purposes. LR 98-12.

The Department has not previously considered the case of two distinct landowners that are using electricity that passes through a single meter. Separate ownership of parcels in an industrial park does not affect the exemption on the electricity so long as both taxpayers occupy a single “building, location or premises” that is serviced by the billed meter. The statute does not define the terms “location” or “premises.” Thus the general rule of statutory interpretation applies, that the words of a

statute are to be construed according to their common and approved usage. *Commonwealth v. Welosky*, 276 Mass. 398, 401 (1931). A “premises” in estates and property is “[a] distinct and definite locality, and may mean a room, shop, building, or other definite area, or a distinct portion of real estate.” Black’s Law Dictionary, 1063 (5th ed. 1979). A “location” in real property is “[t]he designation of the boundaries of a particular piece of land, either upon record or on the land itself.” Black’s Law Dictionary, 847 (5th ed. 1979). Each of these definitions is broad enough to encompass an industrial park that is served by a single electric meter, even where the industrial park is divided between two title holders. It is proper under the statute, therefore, to recognize that the 6(i) exemption may extend to the Taxpayer in this case for all the electricity that passes through the single billed meter, provided that all other statutory requirements are satisfied.

Under this ruling, two separate corporations stand to benefit from an exemption by virtue of occupying the two distinct premises served by electricity that passes through a single billed meter, and because both may be engaged in manufacturing activities. The Department cautions that the burden of proving entitlement to the exemption rests squarely on the Taxpayer. This may be difficult, in that the Taxpayer will need substantial access to the Purchaser’s business records. In approving the exemption, the Department may require that the entire premises be inspected, including those portions owned by the Purchaser. Without the cooperation of both the Taxpayer and the Purchaser, the exemption may be disallowed.

V. Conclusion

The Department concludes that electricity that passes through a single billed meter to be used in an industrial park is eligible for the exemption at G.L. c. 64H, § 6(i) notwithstanding that there is more than one property owner whose consumption of electricity is being measured from that single meter. The burden of proof is on the Taxpayer to show that not less than 75% of the electricity consumed at the industrial park measured through a single billed meter is used for manufacturing or heating, as those terms are described in G.L. c. 64H, § 6(i), in a factory at a fixed location primarily engaged in the manufacture, conversion, or processing of tangible personal property to be sold in the regular course of business.

Very truly yours,

/s/Bernard F. Crowley, Jr.

Bernard F. Crowley, Jr.  
Acting Commissioner of Revenue

BFC:DMS:dt

LR 01-15